IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2033 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

MULJIBHAI AMBABHAI

Versus

STATE OF GUJARAT

Appearance:

MR DN PANDYA for Petitioner

Ms. Sejal Mandavia, learned AGP, for the State.

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 04/04/96

ORAL JUDGEMENT

Rule. Service of rule is waived.

Heard the learned advocates for the parties.

The petitioner is a dealer of foodgrain, sugar and kerosene at village Santalpur. The petitioner was authorised to run fair-price shop and given license as retail dealer in kerosene under the Gujarat Essential Articles (Licensing, Control & Stock Declaration) Order,

1981. On November 9, 1993, the shop of the petitioner was inspected and as many as eight defects and breaches of the conditions for running fair-price shop were noticed, for which show cause notice was given calling upon the petitioner to explain as to why his authorisation for fair-price shop be not cancelled and security deposit should not be forfeited.

The District Supply Officer held the petitioner responsible for the said breaches and ordered for cancellation of authorisation for fair-price shop and forfeiture of security deposit by his order dated April 8, 1994. Against that order, the petitioner preferred an appeal before the District Collector who by order dated April 5, 1995, communicated on June 15, 1995, affirmed the order of the District Supply Officer.

The petitioner approached the State Government by way of revision. The State Government by its order dated 29th July 1995 partly allowed the revision and quashed the order dated 15th June 1995 to the extent that it cancelled authorisation, but went on to order cancelling licence as retail dealer in kerosene.

From the reasons detailed in the order dated 21st January 1996, on which the order dated 29th July 1995 was founded, the Deputy Secretary accepted explanation in respect of allegations Nos. 2 to 8 furnished by the petitioner regarding deficiency alleged at Sr. No.1 of the show cause notice, he accepted the explanation that it was a result of human error in the ordinary course of business.

It is contended by the learned advocate for the petitioner that on the basis of its own finding of the revisional authority, no penalty at all could have been imposed. It was also contended that there being no show cause notice in respect of cancellation of licence as retail dealer in kerosene, the order is also patently invalid being in breach of principles of natural justice in so far as it relates to cancellation of kerosene licence.

The learned Assistant Government Pleader for the State candidly stated that so far as the order cancelling kerosene licence is concerned, it is not supportable in view of the fact that no notice for imposition of such penalty was issued nor any opportunity of hearing to the petitioner in that regard has been afforded. However, the learned Assistant Government Pleader supported the order for forfeiture of security deposit of the amount.

Having carefully considered the rival contentions and perused the orders, the order forfeiting security deposit as well as cancelling kerosene licence cannot be sustained. The revisional authority having found that no breach of allegations at Items Nos. 2 to 8 have been committed which were properly explained by the petitioner and discrepancy in entry in the stock register serialed at No.1 in show cause notice is a result of error in the ordinary course of human conduct, no punishment at all could have been imposed of any nature whatsoever in as much as no breach of any kind even of technical nature have been found to be committed by the petitioner warranting imposition of penalty. In this connection, law is well settled that merely because there is a power to levy penalty, in certain circumstances it is not necessary that every venial or technical breach of such conditions of licence must necessarily result in imposition of certain penalties. In the present case, it is apparent that the revisional authority has not applied its mind while passing the final order after recording its conclusion on various breaches alleged against the petitioner. On the one hand, it accepted practically every explanation furnished by the petitioner in respect of each breach and yet proceeds to cancel licence for kerosene retailing for which not even slightest foundation in any of the orders is made out. This fact alone is sufficient to arrive at irresistible conclusion that, so far as operative part is concerned, the revisional authority went on to pass the order mechanically as if some penalty was necessary to be imposed without application of its mind to its own finding. Under the circumstance, the impugned order cannot be sustained.

Accordingly the petition is allowed. The impugned order of imposition of penalty dated 29th July 1995 supported by the reasons stated in the order dated 29th February 1996 is quashed and set aside. Rule is made absolute with no order as to costs.

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(swamy)